Filed 10/30/12 In re Marcos A. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MARCOS A., a Person Coming Under the Juvenile Court Law.	B239577 (Los Angeles County Super. Ct. No. FJ49535)
THE PEOPLE, Plaintiff and Respondent, v. MARCOS A., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robin Miller Sloan, Judge. Affirmed.

Stephen Borgo, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II and Mark E. Weber, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Marcos A. appeals from an order placing him on probation without wardship after the juvenile court sustained a petition alleging he was driving without a valid license (Veh. Code, § 12500, subd. (a)) and carrying a switchblade knife (Pen. Code, § 653k). Appellant contends the court erroneously denied his motion to suppress the knife recovered during a pat-down search following a traffic stop. (Welf. & Inst. Code, § 700.1.) We conclude the police officer's limited protective search for weapons under the circumstances was justified. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At the hearing on the suppression motion, which was held concurrently with the jurisdiction hearing, Shaun Hillmann, the arresting officer, testified he was part of the Special Problems Unit for the Rampart Division of the Los Angeles Police Department. On the night of August 23, 2011, Officer Hillmann and his partner were patrolling Lake Street and Ocean View Avenue in Los Angeles, an area of numerous citizen complaints about local gang activity, where gang members typically carry guns or knives for protection.

At around 8:20 p.m., the officers noticed a Honda Civic failed to stop at a stop sign on Lake Street. They initiated a traffic stop and approached the car. Appellant was the driver. Two male passengers were in the Civic; one seated in the front seat and the other in the back seat. Based on previous encounters, Officer Hillmann recognized the front seat passenger as a local gang member, currently on parole.

When the officers asked appellant for his driver's license, registration and proof of insurance, he said he did not have a license, and the Civic belonged to his girlfriend. Officer Hillmann confirmed by a computer check that appellant was not licensed to drive. At that point, the officers decided to order the three occupants out of the car and to impound the Civic. Appellant was ordered out of the car first, and Officer Hillmann

conducted a pat-down search for weapons. Officer Hillmann felt what he thought was a knife in one of appellant's pockets and retrieved a switchblade knife with a three-inch blade. Officer Hillmann placed appellant under arrest.

The juvenile court denied appellant's motion to suppress the knife. It sustained the petition, found appellant to be a person described by Welfare and Institutions Code section 602 and, without declaring him a ward of the court, placed appellant on probation for six months pursuant to Welfare and Institutions Code section 725, subdivision (a).

Appellant filed a timely notice of appeal. (See *In re Do Kyung K.* (2001) 88 Cal.App.4th 583, 590 [juvenile may appeal order placing him on probation without wardship].)

DISCUSSION

When reviewing the juvenile court's ruling on a motion to suppress, as in adult criminal cases, we defer to the court's factual findings, express or implied, when supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891; *People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James, supra*, at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.[1] (*Hoyos, supra*, at p. 891; *People v. Ramos* (2004) 34 Cal.4th 494, 505; see *In re Brian A.* (1985) 173 Cal.App.3d 1168, 1173.)

Appellant does not dispute the propriety of the officers' decision to pull him over for a traffic violation or to order him out of the car. Appellant argues, however, the subsequent pat-down search for weapons was unlawful because it was not supported by

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[1] Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art. I, § 28; *In re Randy G.* (2001) 26 Cal.4th 556, 561-562; *In re Lance W.* (1985) 37 Cal.3d 873, 885-890.)

specific and articulable facts showing he may have been armed and dangerous, as required by *Terry v. Ohio* (1968) 392 U.S. 1, 24 [88 S. Ct. 1868, 20 L.Ed.2d 889].

A vehicle stop is analogous to a *Terry* stop because of its brevity and atmosphere. (*Berkemer v. McCarty* (1984) 468 U.S. 420, 439 [104 S.Ct. 3138, 82 L.Ed.2d 317].) During an ordinary traffic stop, an officer may not conduct a full field search of a driver. An officer can conduct a pat-down search for weapons in the course of a lawful detention for officer safety, but only if the officer has a reasonable suspicion that the person may be armed and dangerous. (*Knowles v. Iowa* (1998) 525 U.S. 113, 117-118 [119 S.Ct. 484, 142 L.Ed.2d 492].)

Here, there were specific and articulable facts to support Officer Hillmann's decision to conduct a pat-down search for officer safety. Appellant was stopped at night in gang territory. Although appellant's mere presence in a high-crime area would not have justified a protective search (*Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [120 S.Ct. 673,145 L.Ed.2d 570]), additional facts implied a viable threat to officer safety. Appellant was not alone in the car. He had two male companions, one of whom was a known local gang member and convicted felon, and in Officer Hillmann's experience derived from prior contacts, probably armed. (See *In re H.M.* (2008) 167 Cal.App.4th 136, 146 ["Officers in an area plagued by violent gang activity need not ignore the reality that persons who commit crimes there are likely to be armed."].) Furthermore, Officer Hillmann and his partner were outnumbered three to two by the car's occupants, and the officers intended to conduct a protective weapons search of all three occupants, starting with the juvenile driver before turning to the two passengers. (*Maryland v. Wilson* (1997) 519 U.S. 408, 414 [117 S.Ct. 882, 137 L.Ed.2d 41] [The "danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car."].)

To be sure, Officer Hillmann and his partner did not recognize appellant as a gang member. Nor did appellant's association with a known gang member establish that he too was a gang member, and thus likely to be armed. But in these circumstances, appellant's membership could not be ruled out so as to alleviate the legitimate concern

for officer safety. "The officer need not be absolutely certain that the individual is armed; the [crux of the] issue is whether a reasonably prudent [person] in the [totality of the] circumstances would be warranted in the belief that his [or her] safety or that of others was in danger." (*Terry v. Ohio, supra,* 392 U.S. at p. 27.) For example, in *In re Stephen L.* (1984) 162 Cal.App.3d 257, the court held that a large number of suspects and the knowledge that gang members usually carry weapons justified pat-down searches of individuals who were known gang members, as well as the minor who was not a known gang member, where they were standing near fresh graffiti in a park used as a gang hangout. (*Id.* at pp. 259-260.)

Because the traffic stop occurred at night in gang territory, and the officers were outnumbered by the car's occupants, one of whom was a known gang member and convicted felon, the officers reasonably believed the pat search was necessary for their safety. (*People v. Dickey* (1994) 21 Cal.App.4th 952, 957 ["The judiciary should not lightly second-guess a police officer's decision to perform a patdown search for officer safety. The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations."].) Indeed, the Fourth Amendment has never been interpreted to "'require that police officers take unnecessary risks in the performance of their duties.' [Citation.]" (*Pennsylvania v. Mimms* (1977) 434 U.S. 106, 110 [98 S.Ct. 330, 54 L.Ed.2d 331]; see also *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1255.)

Because we conclude the pat-down search for weapons was lawful, we need not reach appellant's claim that Officer Hillmann failed to provide adequate justification for impounding the Civic as a reason for conducting a pat-down search.

DISPOSITION

The order is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.